WORTH D. WARE
GAYL L. WARE

IBLA 82-1248 Decided July 22, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer for acquired lands. NM-A 51919 (TX).

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Future and Fractional Interest Leases -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease offer for an undivided one-half interest in acquired land must be rejected where the land has been determined to be within the known geologic structure of a producing oil or gas field, even when leasing might be considered in the public interest because the offeror is the owner of the other one-half interest.

APPEARANCES: Sheila R. Tweed, Esq., Houston, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Worth D. and Gayl L. Ware have appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 29, 1982, rejecting their noncompetitive oil and gas lease offer, NM-A 51919 (TX). 1/

On January 8, 1982, appellants filed a noncompetitive oil and gas lease offer for an undivided one-half interest in a 200-acre parcel of acquired land within tract 400-2 in Burleson County, Texas, pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. § 351 (1976).

1/ On July 16, 1982, the BLM decision was amended to reflect the fact that a copy of any appeal should be sent to the Minerals Management Service (MMS), as an adverse party.

By memorandum dated December 9, 1981, BLM had been informed by the Director, Geological Survey (Survey) 2/ that the E. Peaks Survey (A-43) in Burleson County, Texas, was within an extension to the undefined known geologic structure (KGS) of the Giddings field (Somerville Reservoir area), effective December 1, 1981. In its June 1982 decision, BLM rejected appellant's oil and gas lease offer because the land was within a KGS, which is "not available for leasing under the regulations for noncompetitive leasing."

In their statement of reasons for appeal, appellants contend that failure to properly notify potential offerors of the KGS determination, in accordance with 43 CFR 3100.7-2, merits reversal of the BLM decision, citing Barash v. Seaton, 256 F.2d 714 (D.C. Cir. 1958). In the alternative, appellants argue that they are the "only qualified lessee," either under noncompetitive or competitive leasing. They point to the fact that it has been determined that issuance of a lease where the lessee would own less than 50 percent of the operating rights is not in the public interest, under 43 CFR 3101.2-5, and that issuance of a lease where the lessee prior to issuance owns no interest in the leased land but has a substantial interest in the surrounding land, is in the public interest, as decided in Sun Oil Co., 67 I.D. 298 (1960). Appellants explain that they and their immediate family own the other one-half mineral interest in the subject lands and the entire mineral interest in the remainder of tract 400-2, comprising 2,825.2 acres. Appellants conclude that leasing to them would clearly be in the public interest, as required by section 5 of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. § 354 (1976), 3/ where they own a one-half interest in the subject lands, and the entire mineral interest in the surrounding lands, because it would promote efficient and economically feasible development. Finally, appellants contend that BLM may issue a noncompetitive oil and gas lease under 43 CFR 3130.4-1 for a fractional interest where the lands are "believed, but not known to contain mineral deposits." Appellants argue that the lands which they seek to lease are "believed, but not known" to contain a geologic structure, within the meaning of 43 CFR 3150.4-1, because the Giddings field KGS is characterized as "undefined."

[1] It is well established that land within a KGS of a producing oil or gas field may only be leased by competitive bidding under 30 U.S.C. § 226(b) (1976). Angelina Holly Corp., 70 IBLA 294 (1983), and cases cited therein. When land is determined to be within a KGS prior to issuance of a

2/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey. Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of MMS and the Bureau of Land Management within BLM.

3/ Section 5 of the Mineral Leasing Act for Acquired Lands, supra, provides in relevant part:

"Where the United States does not own all of the mineral deposits under any lands sought to be leased and which are affected by this chapter, the Secretary is authorized to lease the interest of the United States in any such mineral deposits when, in the judgment of the Secretary, the public interest will be best served thereby * * *." (Emphasis added.)

lease, a noncompetitive oil and gas lease offer must be rejected. Id. The Department has no discretion to issue a noncompetitive oil and gas lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

Appellants contend that BLM failed to properly notify potential offerors of the KGS determination, in accordance with 43 CFR 3100.7-2, either by Federal Register notice or the filing of a memorandum in the appropriate BLM office. 43 CFR 3100.7-2, indeed, provides for notice of KGS determinations and distinguishes between defined and undefined structures. With respect to defined structures, a notice will be published in the Federal Register. However, with respect to undefined structures, a memorandum "will be filed in the proper office and will be available for public inspection." 43 CFR 3100.7-2. The record indicates that the December 9, 1981, memorandum from Survey, which notified BLM of the KGS determination, was received on December 28, 1981. Appellants' lease offer was filed January 8, 1982, after receipt of the Survey determination. 4/ Accordingly, the memorandum should have been available for appellants' inspection before they filed their offer. 5/

We recognize that it is possible to conclude that leasing of the subject lands is clearly in the public interest in terms of promoting unified development of the land under section 5 of the Mineral Leasing Act for Acquired Lands, supra. See SOCO 1980 Acreage Program, 68 IBLA 132 (1982). However, that conclusion would not alter the fact that the Department simply has no statutory authority to issue a noncompetitive oil and gas lease for lands that have been determined to be within a KGS.

4/ Appellants state that their offer was filed Dec. 16, 1981. The offer, however, is date-stamped Jan. 8, 1982, and, moreover, is dated by appellants as of Dec. 30, 1981.

5/ Appellants rely on the case of Barash v. Seaton, supra, as support for their position that in essence the Department may disregard a KGS determination where it has failed to properly notify potential offerors. The case, however, plainly does not stand for that proposition. That case considered whether the Department was entitled to reject a noncompetitive oil and gas lease offer for land within a KGS. The court, however, in concluding that the Department was not entitled to reject the appellant's offer, held that Survey had not determined that the land was within a KGS. A Feb. 11, 1955, Survey memorandum had stated only that the lands were "believed to be within the known geologic structure." Id. at 717. The court also noted that maps defining the boundaries of the KGS had not been filed in the appropriate BLM offices, as required by 43 CFR 192.6 (1953).

In the present case, Survey did make a determination that the subject land is within a KGS and proper notice was provided in accordance with the current regulation, 43 CFR 3100.7-2. Moreover, even if proper notice had not been given, the court in Barash did not hold that a noncompetitive oil and gas lease may be issued for land which has been determined to be within a KGS, because of that fact alone, and we decline to so hold. Failure to abide by a regulation would not require or permit the Department to act in violation of the statute.

Finally, appellants suggest that BLM may issue a noncompetitive lease under 43 CFR 3150.4-1. 6/ We disagree. 43 CFR 3150.4-1 provides, in relevant part: "[N]oncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby."

However, in Stanolind Oil and Gas Co., A-27326 (July 12, 1956), the Assistant Secretary affirmed a BLM decision which rejected a noncompetitive oil and gas lease application for acquired lands

> on the ground that the record showed the land embraced in the application was situated within the known geologic structure of the so-called Greenwood Field, undefined, on October 15, 1953 (the date the application was filed), and was therefore not subject to noncompetitive leasing under the applicable regulation, 43 CFR 200.7.

See also Frank J. Asam, A-29337 (May 24, 1962). 43 CFR 200.7 (1955) was the predecessor of 43 CFR 3150.4-1, and contained the same language with respect to leasing land "believed, but not known to contain mineral deposits."

Furthermore, we do not equate land containing an undefined KGS with lands "believed, but not known to contain mineral deposits." The difference between defined and undefined essentially relates to the formality and detail of the procedure by which the KGS is established. See Vernon Benson, 48 IBLA 64 (1980). In both cases, the geologic structure, i.e., "the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive," is not any less "known." 43 CFR 3100.0-5(a).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

6/ Appellants incorrectly cite the regulation as 43 CFR 3130.4-1.